

**BEFORE THE  
PHYSICIAN ASSISTANT COMMITTEE  
MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Matter of the Petition for an Interim Order  
of Suspension Against:

**CARLOS MENDEZ, P.A.**

PA Certificate No. PA 10562,

Respondent.

Case No. 1E-2007-188667

OAH No. 2008120510

**ORDER OF INTERIM  
SUSPENSION**  
(Gov. Code, § 11529.)

The Petition for an Interim Order of Suspension (ISO) was heard by Eric Sawyer, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, on January 16, 2009, in Los Angeles.

Wendy Widlus, Deputy Attorney General, represented Elberta Portman (Petitioner), who is the Executive Officer of the Physician Assistant Committee (Committee) of the Medical Board of California.

Carlos Mendez, P.A. (Respondent), was present and represented himself.

The petition, memorandum of points and authorities, declarations and exhibits attached thereto, Respondent's exhibit C (his exhibits A and B were excluded), and the oral argument of the parties were considered.

**FACTUAL FINDINGS**

*Parties & Jurisdiction*

1. On July 12, 1979, the Committee issued Physician Assistant Certificate No. PA10562 to Respondent. The Physician Assistant Certificate was in full force and effect at all times relevant and will expire on March 31, 2010, unless renewed.

2. On or about December 17, 2008, Petitioner, by and through her attorney of record in this matter, filed an Ex Parte Petition for an ISO in her official capacity as Executive Officer of the Committee.

3. The hearing on the Ex Parte Petition for an ISO was heard by ALJ Eric Sawyer, on December 24, 2008, in Los Angeles. Wendy Widlus, Deputy Attorney General, represented Petitioner, and Respondent was present, having received at least 24 hours telephonic notice of that hearing. Respondent was served with the petition and accompanying papers during that hearing. In a ruling made at the hearing, later confirmed by a written order, the Ex Parte Petition for an ISO was denied, without prejudice to Petitioner seeking an ISO on regular notice. At the request of Petitioner, the Ex Parte Petition was converted to a Petition for an ISO on regular notice, and the hearing that ensued was scheduled so as to give Respondent at least 15 days notice.

4. Petitioner has already filed and served an Accusation against Respondent regarding the same events that are raised in the Petition. The hearing on the Accusation is set to commence on June 8, 2009.

#### *Respondent's Hospitalization*

5. On or about December 20, 2007, the Medical Board of California (MBC) Central Complaint Unit, received a complaint by phone from Raymond Esparza, M.D. Dr. Esparza stated that Respondent had tested positive for cocaine after admission to the hospital where Dr. Esparza worked. On or about February 22, 2008, MBC Investigator Thomas Morris (Morris) interviewed Dr. Esparza. During this interview, Dr. Esparza told Morris that he is an on-call emergency room physician who had treated Respondent on December 18, 2007, when Respondent presented to the emergency room vomiting blood. Dr. Esparza later ordered a full panel of laboratory tests to diagnosis what was wrong with Respondent. The lab results revealed Respondent had both alcohol in his urine and cocaine in his blood. The hospital medical records include entries indicating that Respondent is known to be an alcoholic who drinks heavily, who abstained from alcohol for one to two months after a previous hospitalization, but then relapsed. As a result of his condition and the ensuing surgery, Respondent was hospitalized from December 18 through 21, 2007.

#### *Respondent's Interview in February of 2008*

6. On or about February 29, 2008, Morris telephoned Respondent and told him that he was the subject of an investigation that Morris was conducting. Respondent said he would fully cooperate. He further stated that he was not practicing as a physician assistant. On or about April 8, 2008, Morris went to Clinica Medica del Socorro located at 1061 East Vernon Avenue in Los Angeles, where Respondent was employed as a physician assistant, for an unscheduled, unannounced interview of Respondent. Respondent admitted that, despite his previous denial in the first conversation, he was in fact employed as a physician assistant at Clinica Medica del Socorro.

7. During his interview with Morris on February 29, 2008, Respondent said that he had been employed at the clinic on a part-time basis for the past four months. Respondent told Morris that although he was a "heavy drinker" in the past, he had not had a drink in four months. He stated that his alcohol use never interfered with his employment, and claimed he had never been intoxicated while at work. Respondent admitted to previously using marijuana, but denied any treatment for drug abuse. He said he was currently taking Prilosec for stomach problems and Xanax for anxiety.

8. During his interview with Morris on February 29, 2008, Morris asked about his recent hospitalization. Respondent said he had gone to the hospital on December 18, 2007, because he had been vomiting blood. Respondent denied being under the influence of alcohol or drugs at the time of the interview. Respondent then told Morris he had the complete medical records for his recent hospital stay and gave the records to Morris. Morris reviewed the records and found no indication of drug or alcohol impairment. Respondent then gave Morris a copy of what he said were his urinalysis results from the hospital stay which appeared to be negative for alcohol and controlled substances.

9. During the interview, Morris did not observe Respondent to exhibit any objective indicia of impairment.

#### *Respondent's Arrest & Conviction*

10. On April 15, 2008, Morris received Respondent's DMV records, which showed a conviction for a violation of Vehicle Code section 23103, reckless driving, on June 1, 2007. Respondent's driver's license was suspended on June 12, 2007, due to his having an excessive blood alcohol level. That suspension remained in effect until December 11, 2007.

11. On April 25, 2008, Morris obtained a certified copy of the court docket for the arrest and conviction referred to above. The docket noted that Respondent's blood alcohol concentration at the time of his arrest was .08. The docket further noted that Respondent was placed on summary probation for three years under certain terms and conditions. One of the probationary terms and conditions imposed on Respondent was that he not drive a motor vehicle with any measurable amount of alcohol in his system. Another condition was that he not refuse to take a chemical breath test for alcohol or drug consumption when requested by a peace officer. The probation was scheduled to terminate in June of 2010.

12. On April 25, 2008, Morris obtained a certified copy of the Claremont Police Department arrest report for the arrest and conviction referred to above. The arrest report indicates that upon being pulled over, police detected from Respondent the smell of alcohol. Respondent's speech was slow and slurred, and he was unable to keep his balance. Respondent was unable to successfully pass field sobriety tests, and was arrested for driving under the influence. While police searched Respondent's car incident to the arrest, a 12-ounce beer can was located inside a paper bag on the floor behind the passenger seat. Respondent chose a breath test to determine the amount of alcohol in his system, the results of which measured a .08 blood alcohol concentration for Respondent.

*Respondent's Interviews Given in May of 2008 and Lab Test Results*

13. On or about May 2, 2008, at approximately 11:00 a.m., Morris went to Clinica Medica del Socorro for an unscheduled, unannounced interview of Respondent. Respondent was working at the time. Morris told Respondent that he was aware of Respondent's reckless driving conviction and probation. Morris then confirmed the fact that Respondent had driven to work and would be driving home at the end of his shift. Morris told Respondent that he intended to test Respondent pursuant to his probationary terms and conditions, and asked Respondent if he was going to test "dirty." Respondent said "I had three beers last night." Morris reminded Respondent that on April 8, 2008, he told Morris he had not had a drink in four months.

14. Respondent began to cry and said he was an alcoholic in need of help. Morris asked Respondent if he was currently under the influence of alcohol or drugs. Respondent adamantly denied he was under the influence of anything, stating, "I would never have a drink at work or jeopardize the health of someone else by being intoxicated." Respondent provided a urine sample to Morris pursuant to the terms and conditions of his criminal probation. Morris kept the sample with him until he returned to his office, then he shipped it for analysis to Medtox Laboratories, Inc. (Medtox). On May 15, 2008, Morris received the laboratory results from Medtox, of which Respondent tested positive for both alcohol and cocaine metabolite.

15. On May 20, 2008, Respondent came to the MBC's Diamond Bar District Office for a follow-up interview. Morris conducted the interview, and Supervising Investigator Laura Gardhouse and District Medical Consultant H. David Mosier, M.D., were present as well. During the interview Respondent said he was presently taking the following medications: Glyburide 5 milligrams once a day for diabetes, Xanax .25 milligrams occasionally for sleep, Prilosec 20 milligrams once daily, as well as "over the counter" allergy medications as needed. Respondent also told Morris he had previously received alcohol and psychological counseling and treatment from the Veterans Hospital Long Beach, and the "Vet" Center in East Los Angeles. Respondent provided a list of his doctors, as well as the name of the psychologist with whom he was currently in treatment.

16. During his interview of May 20, 2008, Respondent admitted to both continuing to drink alcohol, as well as to snorting cocaine twice a week. He also admitted that he has consistently used cocaine for the past ten years. He signed release forms to release all of his medical records. Respondent agreed to voluntarily submit to both a physical and a mental evaluation. He signed a voluntary agreement for those evaluations. He provided another urine sample to Morris for analysis, which sample Morris kept with him until he shipped it for analysis to Medtox.

17. On May 23, 2008, Morris obtained certified medical records pursuant to the release forms. Of note is that the complete, certified records for Respondent's emergency room visit on December 18, 2007, showed that he tested positive for cocaine, in contrast to the incomplete records Respondent provided to Morris on April 8, 2008.

18. On July 29, 2008, Morris received the laboratory results from Medtox of the urine sample Respondent provided on May 20, 2008. Respondent tested positive for both alcohol and cocaine metabolite.

*Expert Opinions*

19. On May 16, 2008, H. David Mosier, M.D., MBC District Medical Consultant, reviewed Respondent's case file, and thereafter furnished Morris with a declaration discussing the effects of controlled substances, particularly cocaine, and alcohol, upon a person. In part, Dr. Mosier opined that Xanax, in combination with alcohol, may produce adverse behavior, as well as enhance the effects of alcohol. Dr. Mosier further stated that his reviewed revealed to him that Respondent had a problem with alcohol abuse, and quite likely cocaine abuse as well. Since Respondent's behavior indicated that his abuse was uncontrolled, Dr. Mosier concluded that Respondent poses a risk not only to his health and well being, but also to the public. Dr. Mosier's concern was amplified by the fact that Respondent provided a urine sample which showed both alcohol and cocaine in his system while he was working as a physician assistant at a clinic.

20. On June 11, 2008, Christopher Heh, M.D., a psychiatrist licensed to practice medicine in California, performed a psychiatric evaluation of Respondent. Dr. Heh prepared a report of his conclusions which he submitted to the MBC.

A. Dr. Heh noted in his report that Respondent has a "long history of alcoholism with cocaine and marijuana abuse for over 30 years . . . [and] he admits to current use of cocaine and marijuana."

B. Dr. Heh concluded in his report that Respondent's alcoholism "affects his behavior with the public where he has recently been charged and convicted with reckless driving. Albeit he completed an outpatient drug rehab program for this conviction, he continues [to] use alcohol, cocaine and marijuana, whereupon even while working at Clinica Medica del Socorro he is treating patients while under the influence of these drugs."

C. Dr. Heh concluded in his report that Respondent's "continued, untreated, unsupervised, unmanaged alcoholism and illicit drug use poses a grave potential risk to the safety of his patients."

21. On June 17, 2008, Nehal Patel, M.D., a physician and surgeon who is board-certified in Geriatrics and Family Practice and licensed to practice medicine in California, performed a medical history, physical examination, and brief mental evaluation of Respondent. He prepared a report of his conclusions which he submitted to the MBC.

A. Dr. Patel noted in his report that Respondent has a history of a "long and disturbing use and abuse of alcohol." He found Respondent "continues to use alcohol consistently and tested positive for ethyl alcohol and cocaine at work . . . . [F]urthermore, he also uses marijuana and then takes a Xanax at night. This is serious abuse and mixing of

prescription medication with alcohol and cocaine. This could result in serious medical and psychological consequences. My concern would be that [Respondent] is under the influence of cocaine and/or alcohol or marijuana while treating patients during business hours . . . . This could seriously affect his clinical judgment and clinical skills significantly."

B. Based on his extensive chart review, the taped interview and personal physical mental exam of Respondent, Dr. Patel opined that "[R]espondent is medically and mentally unstable to safely and competently practice medicine. He puts great risk to himself and the patients he serves by consistently using cocaine, marijuana, and alcohol."

#### *Other Relevant Evidence*

22. Respondent is a 60-year-old married man with two young twin daughters whom he supports. Respondent reports that his family is currently in financial distress. Respondent served in the United States Army as a medic during the Viet Nam War and received the Bronze Star Medal and the Soldier's Medal for his acts of heroism and bravery during combat.

23. Respondent has no prior record of discipline by the Committee.

24. No evidence was presented indicating that Respondent has engaged in any type of misconduct while acting as a physician assistant.

25. No evidence indicated that Respondent has been seen to exhibit any objective indicia of impairment while at work or engaged in licensed duties.

26. Respondent admitted during the hearing that he has a serious alcohol and drug addiction problem. He stated that prior programs he attended have not worked. Respondent is not currently in a substance abuse or alcohol program nor does he attend support group meetings such as Alcoholics Anonymous or Narcotics Anonymous. Due to his financial difficulty, Respondent stated that he is presently investigating free substance abuse programs offered through the Veterans Administration, for which he would be eligible due to his past military service.

27. Respondent stated during the hearing that he has disclosed the existence of this matter to his present supervising physician, but has not provided him with the pleadings. He also stated that he has disclosed his alcoholism to his supervising physician, but not his drug usage. Respondent stated that the reason for omitting this information is his fear of losing his job were his drug usage discovered by his employer.

28. Respondent stated during the hearing that he has a passion for helping others and that his clients are mostly from an underserved community. Respondent reiterated that he would never go to his clinic and work if he were under the influence of alcohol or drugs.

## LEGAL CONCLUSIONS

1. *Burden of Proof.* The burden of proof in this case is on Petitioner to establish the requested relief by clear and convincing evidence to a reasonable degree of certainty. (*Silva v. Superior Court* (1993) 14 Cal.App.4th 562.)

2. *Standard of Review.* Government Code section 11529, subdivision (a), provides that an ISO may issue against a licensee in an allied health profession (1) if the licensee (a) has or is about to engage in acts or omissions in violation of the profession's governing statutes or (b) is unable to practice safely because of a physical or mental impairment, and (2) if permitting the licensee to continue practicing will endanger the public health, safety or welfare. According to Government Code section 11529, subdivision (e), and consistent with the standards relative to a preliminary injunction issued under Code of Civil Procedure section 527, an ISO shall issue where, in the exercise of discretion, the ALJ concludes: (1) there is a reasonable probability that the petitioner will prevail in the underlying action, and (2) the likelihood of injury to the public in not issuing the order outweighs the likelihood of injury to the licensee in issuing the order.

3. *Cause for Interim Suspension.* Cause for the interim suspension of Respondent's license was clearly and convincingly established pursuant to Government Code section 11529, based on Factual Findings 1-28, as follows:

A. Respondent has engaged in acts in violation of his profession's governing statutes. Business and Professions Code section 2239, subdivision (a), provides that the use of any controlled substance, or of alcoholic beverages, "to the extent, or in such a manner as to be dangerous or injurious to the licensee, or to any other person or to the public, or to the extent that such use impairs the ability of the licensee to practice medicine safely . . . or any combination thereof, constitutes unprofessional conduct." In this case, it was established that Respondent has a serious alcohol and drug addiction which is not presently under control and for which Respondent is not presently receiving treatment. Respondent has not been candid about his addiction problem and has taken some lengths to hide it, which also demonstrates the grip his addictions have over him. His substance abuse problem has led to at least one arrest and conviction, for which Respondent is presently on probation. Moreover, Respondent is currently abusing alcohol and drugs in combination with prescription medications. The uncontroverted expert witness evidence presented in this case indicates that Respondent's abuse of alcohol and illegal drugs, in concert with his consumption of prescriptive medications, poses a risk to himself and to the public. It was thus established that Respondent has used, and is using, controlled substances and alcohol in such a manner as to be dangerous or injurious to himself and to the public.

B. Based on the above, it was established that continuing to allow Respondent to practice as a physician assistant in such an uncontrolled and dangerous condition poses a risk to the public health, safety and welfare.

C. Based on the above, it was established that there is a reasonable probability that Petitioner will prevail in the hearing of the underlying Accusation.

D. Based on the above, it was established that the likelihood of injury to the public in not issuing a suspension order outweighs the likelihood of injury to Respondent in issuing such an order. In considering preliminary injunctive relief, it has been held that where the government has shown the probability of success in proving a statutory violation, "the court is justified in presuming that public harm will result if an injunction is not issued." (*IT Corporation v. County of Imperial* (1983) 35 Cal.3d 63, 69-70.) "[A] rebuttable presumption arises that the potential harm to the public outweighs the potential harm to the defendant." (*Id.*, at 72.) Income loss is not considered to be an injury so grave or irreparable as to overcome such a presumption. (*Id.*, at 75.) In this case, Respondent's acting as a licensee while suffering from uncontrolled substance abuse poses a risk to the public. As a Committee licensee, Respondent is able to provide medical care to patients, including prescribing medications. Thus, Respondent's uncontrolled substance abuse problem also poses a direct risk of harm to any patient he treats while in such a state. An injury to a patient from such a situation could be catastrophic. The law supports the presumption that an injury is likely should an interim suspension not be issued, and that Respondent's injury caused by his loss of income occasioned by an interim suspension does not outweigh the likelihood of injury to the public. Respondent has not presented sufficient evidence to overcome these presumptions.

4. Pursuant to Government Code section 11529, subdivision (f), when an ISO has been issued, a licensee is to be served with an accusation within 15 days of the hearing on the ISO petition, and the licensee has the right to a hearing on the underlying accusation within 30 days request, or else the interim suspension will be dissolved. In this case, the cart has gone before the horse, in that Respondent received the Accusation well before the petition for an ISO, and a hearing on the Accusation has already been set for June of 2009. By operation of Government Code section 11529, subdivision (f), Respondent has the right to an expedited hearing on the Accusation in light of this Order, if he so chooses. Therefore, the Office of Administrative Hearings shall forthwith convene a telephonic status conference with the parties to confirm whether Respondent requests an expedited hearing on the Accusation.

### ORDER

Respondent Carlos Mendez, P.A., is suspended from the practice of medicine as a physician assistant pending the issuance of a final decision in this matter.

Pending a full administrative determination of Respondent's fitness to practice medicine as a physician assistant, Respondent shall not:

- (a) Practice or attempt to practice as a physician assistant any aspect of medicine or surgery;



(b) Advertise, by any means, or hold himself out as practicing or available to practice as a physician assistant;

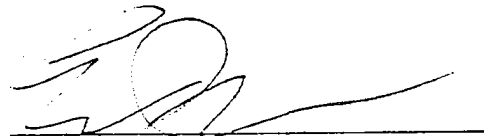
(c) Be present in any location or office which is maintained for the practice of medicine, or at which medicine is practiced, for any purpose except as a patient or as a visitor of family or friends; and

(d) Possess, order, purchase, receive, prescribe, furnish, administer, or otherwise distribute controlled substances or dangerous drugs as defined by federal or state law.

Respondent shall be required, upon receipt of the order of suspension, to immediately deliver to the Committee, or its agent, for safekeeping pending a final administrative order of the Board in this matter, all indicia of his licensure as a physician assistant, as contemplated by Business and Professions Code section 119, including but not limited to his wall certificate and wallet card issued by the Committee, as well as all prescription forms, all prescription drugs not legally prescribed to Respondent by his treating physician and surgeon, all Drug Enforcement Administration Drug Order forms, and all Drug Enforcement Administration registrations and permits.

The Office of Administrative Hearings shall forthwith convene a telephonic status conference with the parties to confirm whether Respondent requests an expedited hearing on the Accusation.

Dated: January 21, 2009

A handwritten signature in dark ink, appearing to read 'Eric Sawyer', is written over a horizontal line.

ERIC SAWYER  
Administrative Law Judge  
Office of Administrative Hearings